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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/808,550	03/14/2001	Ric Joranlien	1207	3826

7590

09/05/2002

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EXAMINER

SORKIN, DAVID L

ART UNIT

PAPER NUMBER

1723

DATE MAILED: 09/05/2002

4

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/808,550

Applicant(s)

JORANLIEN ET AL.

Examiner

David L. Sorkin

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 July 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-45 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-45 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 24 July 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☒ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s) _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

DETAILED ACTION

1. The instant application claims priority under section 120 to application No. 09/562,167. Application No. 09/562,167 resulted in Patent No. 6,409,376, which shares no common inventor with the instant application. Applicant is asked to state whether the invention claimed in Patent No. 6,409,376 and the invention claimed in the instant application are commonly owned and whether they were commonly owned at the time of invention. Applicant is advised of the obligation under 37 CFR 1.56 to disclose information known to be material to patentability. In the instant case, prior art under 35 U.S.C. 102 (f) and/or (g) as it applies under 35 U.S.C. 103(a) may be particularly material. It is noted that many of the limitations claimed in the instant application were also claimed in Patent No. 6,409,376. Applicant's candor is requested in determining if, for example, William Knight contributed to the removable as a unit wheel and auger aspect of the claimed invention, the three load cell and rotatable clevis arrangement, or any other aspect of the claimed invention.

Oath/Declaration

2. The declaration is defective because it is not signed. A properly executed oath or declaration is required.

Claim Objections

3. Claim 45 should have one period rather than three.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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5. Claims 1-45 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
6. In the preambles of the independent claims (1 and 45), the phrase "and the like" renders the claims. See MPEP § 2173.05(d).
7. Likewise, claim 5 is rendered indefinite by the phrase "or the like".
8. In claim 40, there is lack of antecedent basis for "said drive wheel".
9. In claim 42, there is lack of antecedent basis for "the tractor".
10. In claim 45, there is lack of antecedent basis for "said drive wheel".

Claim Rejections - 35 USC § 102

11. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

12. Claims 1, 3-5, 12-18, 20, 23, 24, 36, 43 and 44 are rejected under 35 U.S.C. 102(b) as being anticipated by Van der Plas (EP 0 706 755 A1). Regarding claim 1, EP ('755) discloses a mixer comprising a container including a housing (including 9), a wall (11) extending away from said housing, said wall defining an opening disposed remote from said housing, such that the housing and the wall define an enclosure; an auger (6), disposed within said enclosure, said auger having an axis of rotation extending through said housing; said auger including a core (see Fig. 2) and a flighting (7) connected to said core; said flighting including a first portion and a second

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portion staggered relative to the first portion (see Fig. 2 and other Figs.; col. 5, lines 24-29). Regarding claim 3, said container further includes a frame for supporting said housing thereon (see figures). Regarding claim 4, the container further includes a plurality of wheels (1). Regarding claim 5, the container further includes a hitch bar secured to the frame (see col. 4, lines 50-59). Regarding claim 12, the wall extends angularly away from the housing (see col. 5, lines 17-19). Regarding claim 13, the wall defines a discharge outlet (45). Regarding claim 14, the discharge outlet includes a door (46). Regarding claim 15, said discharge outlet includes a door (46) and at least one expeller (49). See also col. 1, lines 24-29. Regarding claim 16 said discharge outlet includes a door (46) and a conveyor (49). See also col. 1, lines 24-29. Regarding claim 17, said flighting is disposed helically about said core (see col. 6, line 3-7). Regarding claim 18, said core is of cylindrical configuration (see Fig. 3). Regarding claim 20, said first portion overlaps said second portion (see Figs. 2-4). Regarding claim 23, said first portion and said second portion are disposed generally parallel relative to each other (see Fig. 2). Regarding claim 24, said first portion and said second portion diverge relative to each other (see Fig. 16). Regarding claim 36, the mixer includes a further auger (6) disposed within said enclosure has a rotational axis disposed approximately parallel to and spaced from said axis of rotation of said auger; a drive wheel (at or just below 5 in Fig. 2) common to said auger and said further auger, said drive wheel having a further axis of rotation which is spaced and approximately parallel to said axis of rotation of said auger and said axis of rotation of said further auger (see Figs. 1 and 2). Regarding claim 43, a helical path followed by

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said second portion is spaced relative to a further helical path that would continue from said first portion (see Fig. 2; col. 6, lines 3-7). Regarding claim 44, the container is truck mounted (see Figs. 1 and 2).

13. Claim 1, 3, 13-18, 20-24 and 43 is rejected under 35 U.S.C. 102(b) as being anticipated by Fukushima et al. (US 5,823,667). Fukushima ('667) discloses a mixer apparatus comprising a container including a housing (that which hold transmission 8, see fig. 1), a wall (2) extending away from said housing defining an opening (9 or 10) disposed remote from said housing, the wall and housing defining an enclosure; an auger (16) disposed within said enclosure, said auger having an axis of rotation extending through the housing; said auger including, a core (17c, 18d, 17b in figs. 7A and 7B and 6a in Fig. 14); flighting (18a and 6) connected to said core; said flighting including a first portion and a second portion staggered relative to the first portion (see figs. 7A, 7B and 14). Regarding claim 3, said container further includes a frame for supporting said housing thereon (see Figs. 1 and 14). Regarding claim 13, said wall defines a discharge outlet (10) for the discharge therethrough of the feed. Regarding claim 14, said discharge outlet includes a door (11a,11b). Regarding claim 15, said discharge outlet includes a door (11a,11b) and at least one expeller (see col. 2, lines 32-35). Regarding claim 16 said discharge outlet includes a door (11a,11b) and a conveyor (see col. 2, lines 32-35). See also col. 1, lines 24-29. Regarding claim 17, said flighting is disposed helically about said core (see figs. 7A, 7B and 14). Regarding claim 18, said core is of cylindrical configuration see figs. 7A, 7B and 14). Regarding claim 20, said first portion overlaps said second portion (see Figs. 8B, 9D, 11A, 11B,

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14). Regarding claim 21, said first portion has a first and a second end, said first end being disposed adjacent to said housing; said second portion has a first and second extremity being disposed in an adjacent spaced relationship relative to said second end of said first portion (see Figs. 8B, 9D, 11A, 11B). Regarding claim 22, said first portion is a paddle and said second portion is a further paddle (see Fig. 14). Regarding claim 23, said first portion and said second portion are disposed generally parallel relative to each other (see Fig. 2). Regarding claim 24, said first portion and said second portion diverge relative to each other (see Fig. 16). Regarding claim 43, a helical path followed by said second portion is spaced relative to a further helical path that would continue from said first portion (see 7A, 7B, 8A, 8B, 9A-D, for example).

14. Claims 1, 3-5, 13, 17, 18, 20, 24, 36, 43, and 44 are rejected under 35 U.S.C. 102(b) as being anticipated by Behrens (US 3,421,740). Regarding claim 1, Behrens ('740) discloses a mixer apparatus comprising a container including housing (that which holds 76, 78, 80, 82, 84, 86 and 88; see figs. 2 and 4), a wall (12) extending away from said housing defining an opening (at top of fig. 4) disposed remote from said housing, the wall and housing defining an enclosure; an auger (40) disposed within said enclosure, said auger having an axis of rotation extending through the housing; said auger including, a core (see fig. 2); flighting (42,44,48,50) connected to said core; said flighting including a first portion (42) and a second portion (44) staggered relative to the first portion (see figs. 7A and 7B). Regarding claims 3-5, a frame, wheels and hitch bar are disclosed. (See Figs. 1 and 4). Regarding claim 13 said wall defines a discharge outlet (36). Regarding claim 17, said flighting is disposed helically (see Fig. 2).

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Regarding claim 18, said core is cylindrical (see Fig. 2). Regarding claim 20, said first portion overlaps said second portion (see Fig. 2). Regarding claim 24, said first and second portions diverge (see Fig. 2). Regarding claim 36, the mixer includes a further auger disposed within said enclosure has a rotational axis disposed approximately parallel to and spaced from said axis of rotation of said auger; a drive wheel common to said auger and said further auger, said drive wheel having a further axis of rotation which is spaced and approximately parallel to said axis of rotation of said auger and said axis of rotation of said further auger (see Fig. 2). Regarding claim 43, a helical path followed by said second portion is spaced relative to a further helical path that would continue from said first portion (see Fig. 2). Regarding claim 44, the container is truck mounted (see Fig. 1).

Claim Rejections - 35 USC § 103

15. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

16. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to

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consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

17. Claims 2, 26-30, 37 and 38 are rejected under 35 U.S.C. 103(a) as being unpatentable over EP ('755). Regarding claim 2 a final driven wheel (10) is disposed within the housing and is drivingly connected to the auger. It is not explicitly disclosed that the auger and final driven wheel are removable as a unit. However, making parts separable and integral has been held to be obvious. See *In re Dulberg*, 289 F.2d 522, 523, 129 USPQ 348, 349 (CCPA 1961) and *In re Larson*, 340 F.2d 965, 968, 144 USPQ 347, 349 (CCPA 1965). Regarding claims 26 and 27, it would have been obvious to one of ordinary skill in the art to have made wheel 10 a gear wheel with straight teeth, to engage chain 4. Regarding claim 28, the size of the gear wheel is not disclosed; however it is has been held that a difference only in size is unpatentable over the prior art (see *In re Rose*, 220 F.2d 459, 105 USPQ (CCPA 1955) and *Garder v. TEC Sustems, Inc.* 725 F.2d 1338, 220 USPQ 777 (Fed. Cir. 1984), *cert. denied*, U.S. 830, 225 USPQ 232 (1984)). Regarding claim 29, the final driven wheel is a sprocket wheel. (see Fig. 1, col. 6, lines 11-14). Regarding claim 30, a drive wheel (at or just below 5 in Fig. 2) has a further axis of rotation which is parallel to the axis of rotation of the auger and drives said final driven wheel (see Fig. 1). In the mixer of EP ('755) the exact positions of the parallel axes recited in claims 37 and 38 are not disclosed. However, especially considering that the reference states that the drive path/means may be varied (see col. 6, lines 8-14), it is considered such a relocation of parts does not patentably

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distinguish the claims from the prior art. See *In re Japikse* 86 USPQ 70 (CCPA 1950) and *In re Kuhle*, 188 USPQ 7 (CCPA 1975).

18. Claim 39 is rejected under 35 U.S.C. 103(a) as being unpatentable over EP ('755) as applied to claim 36 above, in view of Fukushima ('667). While EP ('755) further discloses a further final driven wheel (10), EP ('755) discloses sprocket gears rather than intermeshing gears. Fukushima ('667) teaches a mixing auger being driven by an intermeshing gear system (see Fig. 1; col. 1, lines 40-45). It is considered that it would have been obvious to one of ordinary skill in the art to have modified the gear system of Fukushima ('667) to be an intermeshing system as taught by Fukushima ('667), because EP ('755) suggests (see col. 6, lines 8-14) that alternative drive means may be employed.

19. Claims 40 and 41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Van der Plas (EP 0 706 755 A1) in view of Behrens (US 3,421,740). EP ('755) further, discussed above regarding claim 29, further discloses a drive wheel being a sprocket drive (at or just below 5 in Fig. 2), a chain drive (4), and a further final driven sprocket wheel (10). EP ('755) discloses a single drive sprocket and chain drive (4) driving two final driven sprocket wheels, rather than two coaxial drive sprockets and two chain drives driving two driven sprocket wheels, as claimed. Behrens ('740) teaches two coaxial drive sprocket wheels (78,86) and two drive chains (76,84) driving two driven wheels (see Fig. 4). It is considered that it would have been obvious to one of ordinary skill in that art to have used the two coaxial wheel, two drive arrangement of

Behrens ('740), in the mixer of EP ('755), because EP ('755) suggests the use of alternative drive arrangements (see col. 6, lines 8-14).

20. Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Van der Plas (EP 0 706 755 A1) in view of Stone (US 5,429,436). The core of the auger of EP ('755) is not conical. Stone ('436) discloses a conical core (see Fig. 1). It is considered that it would have been obvious to one of ordinary skill in that art to have provided the auger of EP ('755) with a conical core as taught by Stone ('436), because EP ('755) specifically states that the augers "may have a great many different shapes" (col. 5, lines 10-11).

21. Claim 25 is rejected under 35 U.S.C. 103(a) as being unpatentable over Van der Plas (EP 0 706 755 A1) in view of Stone (US 5,429,436) as applied to claim 19 above, and further in view of Safely (US 384,719). EP ('755) and Stone ('436) do not disclose the outer edge of flighting being canted toward the housing. Safely ('719) teaches canting the outer edge of flighting toward a housing (see drawing, col. 1, lines 23-29). It is considered that it would have been obvious to one of ordinary skill in the art to have canted the flighting of EP ('755) in view of Stone ('436) toward the housing as taught by Safely ('719), because Safely ('719) explains that such an arrangement is beneficial in causing material circulation.

22. Claims 1-24 and 26-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stone (US 5,429,436) in view of Behrens (US 3,421,740). Regarding claim 1, Stone ('436) discloses a mixer apparatus comprising a container including a housing (23); a wall (21) extending away from the housing (see fig. 10); said wall

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defining an opening disposed remote from said housing, said wall and housing defining an enclosure (see fig. 1); and auger (22) disposed within said enclosure said auger having an axis of rotation extending through said housing. The auger has a core and flighting. See Fig. 1. Stone ('436) fails to disclose flighting including a second portion staggered relative to a first portion. Behrens ('740) teaches flighting (42,44,46,4,50 and 52) which includes several staggered portions (see fig. 2). It is considered that it would have been obvious to one of ordinary skill in the art to have staggered the flighting of Stone ('436) as taught by Behrens ('740) for improved mixing (see Behrens col. 2, line 22 to col. 3, line 43). Regarding claim 2, Stone ('436) further teaches a final driven wheel (within 124; see col. 7, lines 10-13) rotatable about said axis of rotation and drivingly connected to said auger so that when said final driven wheel is rotated within said housing, said auger is rotated therewith within said enclosure. While Stone ('436) discloses a removeable floor (101), it is not explicitly disclosed that the auger and final driven wheel are removable as a unit. However, making parts separable and integral has been held to be obvious. See *In re Dulberg*, 289 F.2d 522, 523, 129 USPQ 348, 349 (CCPA 1961) and *In re Larson*, 340 F.2d 965, 968, 144 USPQ 347, 349 (CCPA 1965). Regarding claim 3, the housing is on a frame (see fig. 1). Regarding claim 4, a plurality of wheels (74) are rotatably secured to the frame. Regarding claim 5, a hitch bar (74) is secured to the frame. Regarding claim 6, said housing includes a base (97) and a rim (see fig. 10) having a first and a second end, said first end of said rim being secured to said base; a floor (101) disposed between said auger and said final driven wheel, said floor being secured to said second end of said rim, such that the base, the

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rim and the floor define an encasement for the drive wheel. Regarding claim 7, the floor defines an access hole (see fig. 10). Regarding claim 8, the floor is a cover for covering the access hole and defines an aperture through which the axis of rotation extends so that driving the auger by the final driven wheel is permitted. Regarding claim 9, said cover includes a bearing extending through the aperture, said bearing being disposed between said auger and said final driven wheel for bearingly supporting said auger and said final driven wheel for permitting rotation of said auger and said final driven wheel (see col. 7, lines 10-38). Regarding claim 10, said floor defines an array of bores disposed around the access hole; the cover has a peripheral edge which defines a plurality of holes; and a plurality of fasteners (99) extend through the bores and holes for removably fastening the cover to the floor (see fig. 10). Regarding claim 11, it is notoriously well known to include lubricant in a gear box. Regarding claim 12, the wall extends angularly away from the housing (see figs. 1 and 10). Regarding claim 13, said wall defines a discharge outlet (32). Regarding claim 14, the discharge outlet has a door (33). Regarding claim 15, the discharge outlet has a door (33) and at least one expeller (26) disposed adjacent to said door from moving feed away from the enclosure. Regarding claim 16, the discharge outlet includes a door (33) and a conveyor (26) disposed adjacent to said door from moving feed away from the enclosure. Regarding claim 17, said flighting is disposed helically around the core (See Fig. 1). Regarding claim 18, the core includes a cylindrical portion (106). Regarding claim 19, the core includes a conical portion (113). Regarding claim 20, Behrens ('740) further teaches overlapped portions (see Fig. 2). Regarding claim 21, Behrens ('740) further teaches

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first and second portions each having first and second extremities in adjacent spaced relation as claimed (see Fig. 2). Regarding claim 22, Behrens ('740) further teaches first and second paddles (see Fig. 2). Regarding claim 23 Behrens ('740) further teaches a first (42) and second (48) portion being parallel. Regarding claim 24, Behrens ('740) further teaches a first (44) and second (48) portion being divergent. Regarding claim 26, the final driven wheel is a gear wheel (see col. 7, lines 10-19). Regarding claim 27, it is considered that col. 7, lines 10-19 would have suggested to one of ordinary skill in the art to use straight teeth. Regarding claim 28, the size of the gear wheel is not disclosed; however it is has been held that a difference only in size is unpatentable over the prior art (see *In re Rose*, 220 F.2d 459, 105 USPQ (CCPA 1955) and *Garder v. TEC Sustems, Inc.* 725 F.2d 1338, 220 USPQ 777 (Fed. Cir. 1984), *cert. denied*, U.S. 830, 225 USPQ 232 (1984)).

23. Claim 42 is rejected under 35 U.S.C. 103(a) as being unpatentable over Stone (US 5,429,436) in view of Behrens (US 3,421,740) as applied to claim 4 above, and further in view of Skinner (US 2,551,709). Stone ('436) further discloses that the plurality of wheels (74) include a first wheel and a second wheel coaxial with the first wheel (see fig. 5); a hitch bar (76) remote from the wheels; a first and second load cells (86) disposed between said first and second wheels, respectively and the frame; a third load cell (77) having first and second ends, the first end being secure to the hitch bar. It is stated that the second end of the third load cell is attached to a tractor or the like (see col. 5, lines 59-66), however a rotatable clevis is not explicitly disclosed. Skinner ('709) teaches a rotatable clevis (see fig. 1; col. 1, lines 17-21; and col. 2, lines 37-44). It is

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considered that it would have been obvious to one of ordinary skill in the art to have used the rotatable clevis of Skinner ('709) in the apparatus of Stone ('436) because Skinner ('709) states his clevis is beneficial in rough terrain (see col. 1, lines 1-16) and Stone ('436) intends his apparatus to be used in rough terrain (see col. 2, line 12).

24. Claim 45 is rejected under 35 U.S.C. 103(a) as being unpatentable over Van der Plas (EP 0 706 755 A1) in view of Behrens (US 3,421,740). EP ('755) discloses a mixer comprising a container including a housing (including 9), a wall (11) extending away from said housing, said wall defining an opening disposed remote from said housing, such that the housing and the wall define an enclosure; an auger (6), disposed within said enclosure, said auger having an axis of rotation extending through said housing; said auger including a core (see Fig. 2) and flighting (7) connected to said core; said flighting including a first portion and a second portion staggered relative to the first portion (see Fig. 2 and other Figs.; col. 5, lines 24-29), a final driven wheel (10) drivingly connected to the auger, a drive wheel (at or just below 5 in Fig. 2), a drive (4) extending around the drive wheel and the final driven wheel, and a further final driven wheel (see Fig. 1 and 3). The examiner agrees with applicant's admission on page 14, lines 1-5 of the specification and considers that pulley/belt arrangements are recognized equivalents of sprocket/chain arrangements. While the reference does not state that the final driven wheel and auger are removable as a unit, making parts separable and integral has been held to be obvious. See *In re Dulberg*, 289 F.2d 522, 523, 129 USPQ 348, 349 (CCPA 1961) and *In re Larson*, 340 F.2d 965, 968, 144 USPQ 347, 349 (CCPA 1965). EP ('755) discloses a single drive wheel and drive (4) driving two driven wheels, rather than

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two coaxial wheels and two drives driving two driven wheels, as claimed. Behrens ('740) teaches two coaxial wheels (78,86) and two drives (76,84) driving two driven wheels (see Fig. 4). It is considered that it would have been obvious to one of ordinary skill in that art to have used the two coaxial wheel, two drive arrangement of Behrens ('740), in the mixer of EP ('755), because EP ('755) suggests the use of alternative drive arrangements (see col. 6, lines 8-14).

Conclusion

Claims 31-35 have been rejected under section 112, but not section 102 or 103. Highly similar subject matter is claimed in US Patent No. 6,409,376, to the sole inventor William Knight, who is not indicated as an inventor of the instant invention. However, instant claims 31-35 additionally recite staggered flight portions, which are not recited in the claims of Knight. The examiner considers that it would have been obvious to one of ordinary skill in the art to have staggered portions of the flight of Knight, in view of the teachings of Behrens ('740); however, a non-statutory double-patenting rejection has not been made, because the examiner have no reason to believe the instant application and US Patent No. 6,409,376 are commonly owned. The examiner awaits applicant's execution of an oath or declaration and compliance (if such has not already occurred) with the duty disclose under 37 CFR 1.56 mentioned therein. After these events, the examiner can properly determine if allowable subject matter is being claimed.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to David L. Sorkin whose telephone number is 703-308-1121. The examiner can normally be reached on 8:00 -5:30 Mon.-Fri..

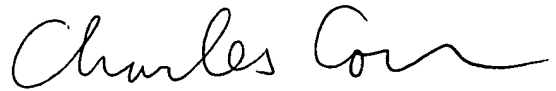
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wanda L. Walker can be reached on 703-308-0457. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.



David Sorkin

September 3, 2002



CHARLES E. COOLEY
PRIMARY EXAMINER